

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OFF-WHITE LLC,

Plaintiff,

-v.-

5HK5584, *et al.*,

Defendants.
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ORDER

19-CV-672 (RA) (JLC)

JAMES L. COTT, United States Magistrate Judge.

By Order of Reference dated October 18, 2019, Judge Abrams referred this case to me to conduct an inquest concerning Plaintiff's damages on its claims of trademark counterfeiting and infringement. Dkt. No. 46. On October 22, 2019, I issued a Scheduling Order requiring Plaintiff to file, by November 12, 2019, Proposed Findings of Fact and Conclusions of Law concerning all damages and any other monetary relief permitted under the entry of default judgment. Dkt. No. 47. In its submissions timely filed on November 12, 2019 (Dkt. Nos. 48-50), Plaintiff requested a tiered structure of statutory damage awards based on the number of sales of counterfeit products by each Defaulting Defendant, and seeking damages within a range of \$100,000 to \$2,000,000. Dkt. No. 50 at 23–24. Plaintiff's submissions do not explain how it arrived at the damages figures associated with the different Defaulting Defendants and/or tiers.

Accordingly, no later than **March 19, 2020**, Plaintiff is hereby ordered to file on ECF a letter that explains the basis for the statutory damages sought as to each

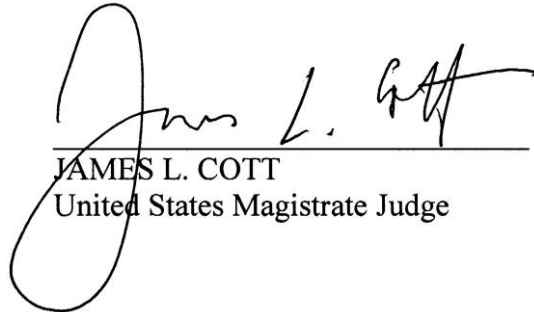
Defaulting Defendant, consistent with applicable law. *See, e.g., Coach, Inc. v. O'Brien*, No. 10-CV-6071 (JPO) (JLC), 2012 WL 1255276, at *2 (S.D.N.Y. Apr. 13, 2012) (“[a]lthough statutory damages need not match actual damages, courts generally hold that ‘statutory damages should bear some relation to actual damages suffered’”) (quoting *Yurman Studio, Inc. v. Castaneda*, No. 07-CV-1241 (SAS), 2008 WL 4949775, at *2 (S.D.N.Y. Nov. 19, 2008)). At a minimum, Plaintiff’s explanation shall address the following:

1. Plaintiff presented a summary chart of the number of counterfeit products sold by Defaulting Defendants on eBay.com based on a purported report produced by eBay in response to Plaintiff’s discovery requests. Affidavit of Brienne Scully dated November 12, 2019, Dkt. No. 49, ¶ 19, Exhibit D. Plaintiff shall file the eBay report and explain as a matter of law why this document is admissible (citing any authority in support of its admissibility).
2. Plaintiff shall further explain why the tiered requests ranging between \$100,000 for Defaulting Defendants that sold less than 100 counterfeit products and \$2,000,000 for a single Defaulting Defendant that sold 3,136 counterfeit products, and not some other amounts, are appropriate in this case. *Cf. Ideavillage Prods. Corp. v. Aarhus*, No. 18-CV-2739 (JGK) (SDA), 2019 WL 2290514, at *8 (S.D.N.Y. May 7, 2019) (recommending proposed tiered statutory damage awards between \$50,000 for defaulting defendants that sold less than 100 counterfeit products and \$2,000,000 for single

defaulting defendant that sold approximately 30,000 counterfeit products),
adopted by 2019 WL 2287726 (May 28, 2019).

3. Paragraph 25 of the Complaint (Dkt. No. 10) alleges that the Defaulting Defendants conducted their business on eBay.com “as well as potential yet undiscovered additional online marketplace platforms.” Plaintiff shall state whether it has discovered any additional online marketplace platforms used by the Defaulting Defendants and whether it is aware of any sales by Defaulting Defendants other than those sales reflected in the data produced by eBay.

Dated: March 12, 2020
New York, New York



JAMES L. COTT
United States Magistrate Judge